

AUG 08 2002

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of

Friends of Ronnie Shows and  
Cecil Brown, as Treasurer  
Southwest Publishers

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MURs 5017 and 5205

**GENERAL COUNSEL'S REPORT #7**

**I. ACTION RECOMMENDED:**

Reopen this matter to rescind the signed conciliation agreement and approve a revised conciliation agreement. In addition, place submissions from the Treasurer and the Candidate on the public record. Further, determine not to place Southwest Publishers' submissions on the public record at this time.

**II. BACKGROUND**

On May 22, 2001, the Commission found reason to believe that Friends of Ronnie Shows and Cecil Brown, as Treasurer ("the Committee") violated 2 U.S.C. §§ 441a(f), 441f, 441b(a), 441g and 434(b). On February 15, 2002, the Commission approved a conciliation agreement for the Committee and closed the file in this matter. Attachment 1.

On May 22, 2001, the Commission also found reason to believe that Southwest Publishers made a prohibited corporate contribution of \$100 to the Committee in violation of

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2 U.S.C. § 441b(a),<sup>1</sup> but the Commission decided to take no further action with respect to this respondent.

### III. TREASURER'S POST CLOSURE REQUEST

In a letter dated March 19, 2002, counsel for Cecil Brown, the current Treasurer of the Committee, requests that the Commission delete Mr. Brown's name from the signed conciliation agreement.<sup>2</sup> Attachment 2. Counsel states "Mr. Brown has no objection to-or even first-hand knowledge of-the substance of the allegations contained in the Agreement that are directed toward the Shows Committee. Mr. Brown does, however, specifically and vigorously object to any allegation that is directed toward him." *Id.*

Counsel states that Mr. Brown was not the Committee's Treasurer when the offenses were committed and he states his client "learned of the MUR for the first time [on March 18, 2002]." *Id.* According to counsel, Mr. Brown was never advised of the agreement that was executed in this matter. He does not believe that counsel for the Committee had authority to execute an agreement on Mr. Brown's behalf since Mr. Brown did not sign the Designation of Counsel form. Finally he states that Mr. Brown's "objections can be cured if the FEC deletes his name from the Agreement." *Id.*

Subsequently, in a letter dated March 26, 2002, counsel for Cecil Brown requests that the Commission revise the signed conciliation agreement in one of two ways. *See* Attachment 3. One possible revision maintains the existing agreement and adds language in the introductory paragraph stating "Cecil Brown is only named in this agreement in his official capacity as the

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<sup>1</sup> The Commission also found reason to believe against several other respondents in this matter.

<sup>2</sup> On March 20, 2002, counsel for Mr. Brown submitted a Designation of Counsel form.

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1 current treasurer of the Committee. He was not the Treasurer at the time the offenses were  
2 committed."<sup>3</sup> The second proposed revision states that the Commission found reason to believe  
3 against the prior Treasurer, Thomas Bass, and includes a footnote stating:

4  
5 Mr. Bass is no longer treasurer of the Committee. In 2000[,] he  
6 resigned, and Cecil Brown assumed the position. Accordingly, Mr.  
7 Brown, solely in his official capacity as the current treasurer of the  
8 Committee, has been substituted as a Respondent for Mr. Bass.  
9 Mr. Brown had no official role in the Committee at the time the  
10 offenses were committed.

11  
12 Counsel indicates that the second alternative is preferred, but either is acceptable and will result  
13 in him withdrawing his objection to the conciliation agreement. *Id.* In addition, counsel requests  
14 that both letters be made part of the public record. *Id.*

15 Further, the Candidate submitted a letter dated March 20, 2002 requesting that Mr.  
16 Brown's status as a successor treasurer be included in the conciliation agreement. Attachment 4.  
17 The Candidate also requested that his letter be made part of the public record in this matter.

18 This Office recommends that the Commission reopen this matter to rescind the original  
19 conciliation agreement and approve a revised conciliation agreement that includes additional  
20 language reflecting Mr. Brown's status as a successor treasurer. Both counsel for Mr. Brown  
21 and counsel for the Committee signed the revised conciliation agreement. Attachment 5. This  
22 Office recommends revising the conciliation agreement in a manner consistent with the  
23 Treasurer's proposal to add language to the introductory paragraph of the conciliation agreement  
24 that states "Cecil Brown is only named in this agreement in his official capacity as the current

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<sup>3</sup> This Office suggested this language as a possible resolution.

1 treasurer of the Committee. He was not the treasurer at the time the offenses were committed.”  
2 The Office of General Counsel named Cecil Brown in this matter in his official capacity as the  
3 current Treasurer of the Committee pursuant to current Commission policy.<sup>5</sup> However, this  
4 Office acknowledges the merit of the Treasurer’s argument that the agreement should reflect the  
5 fact that he was not the Treasurer at the time of the violations. Therefore, this Office believes  
6 that including the revised language is appropriate.<sup>6</sup> In addition, both Mr. Brown and the  
7 Committee have accepted the proposed language to resolve this matter by signing the revised  
8 conciliation agreement and the Committee submitted the \$25,000 civil penalty check.<sup>7</sup>

9 In addition, this Office recommends granting the Treasurer’s request to place his letters  
10 and the Candidate’s letter on the public record. In applying the ruling in *American Fed’n of*  
11 *Labor and Congress of Indus. Orgs. v. Federal Election Comm’n*, 177 F. Supp.2d 48 (D.D.C.  
12 2001), *appeal docketed*, No. 02-5069 (D.C. Cir. Feb. 28, 2002), the Commission is only placing  
13 on the public record dispositive General Counsel’s Reports, Conciliation Agreements,  
14 Statements of Reasons and Certifications of Commission votes. In that decision, the court  
15 construed the Federal Election Campaign Act of 1971, as amended ( the “Act”) as limiting what

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<sup>5</sup> The First General Counsel’s Report in this matter noted that on August 14, 2000, the Committee notified the Reports Analysis Division that Cecil Brown replaced Thomas G. Bass as Treasurer for the Committee.

<sup>6</sup> This Office notes that the Treasurer’s second proposed revision is not factually accurate since it names the prior Treasurer and the Commission did not find reason to believe against the prior Treasurer.

<sup>7</sup> This Office notes that Mr. Brown’s arguments regarding his ignorance of this matter may not be justified. Mr. Brown is the current Treasurer of the Committee and should have been aware of the enforcement matter against the Committee and its Treasurer. In addition, in response to the Commission’s reason to believe notification letter, this Office received a letter dated August 6, 2001 that states, “Friends of Ronnie Shows and its treasurer, Cecil Brown wish to pursue pre-probable cause conciliation.” That letter is signed “Ellen L. Weintraub Counsel for Friends of Ronnie Shows and Cecil Brown as Treasurer.” Thus, it appeared that counsel represented Mr. Brown. Nevertheless, only the Candidate signed the Designation of Counsel form and Ms. Weintraub has indicated that she now believes she did not have authority to negotiate a settlement on behalf of Mr. Brown.

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1 the Commission could place on the public record that relates to an investigation. The Treasurer's  
2 letters and the Candidate's letter did not arise during the investigative process. Rather, these are  
3 post-closure documents that do not address the substantive issues in the matter. In addition, it  
4 appears that the Treasurer and the Candidate provided written consent to disclose the documents  
5 at issue. See 2 U.S.C. § 437g(a)(12).<sup>8</sup> Therefore, the Office of General Counsel recommends  
6 that the Commission place the Treasurer's letter of March 19, 2002 and March 26, 2002 and the  
7 Candidate's letter of March 20, 2002 on the public record.

#### 8 IV. SOUTHWEST PUBLISHERS

9 In response to the Commission's reason to believe notification letter, Southwest  
10 Publishers submitted information indicating that the \$100 it paid to Ronnie Shows was not a  
11 contribution to the Committee, but a refund to the Committee for an overpayment for advertising  
12 services.<sup>9</sup> See Attachment 6. On August 14, 2001, the Commission considered Southwest  
13 Publishers' response and decided not to reopen this matter with respect to Southwest Publishers,  
14 but to notify the respondent that it could place this information on the public record once the  
15 matter was completely closed as it pertains to all respondents.<sup>10</sup>

16 The Commission closed this matter with respect to all respondents on February 15, 2002.  
17 However, because the court construed the Act as limiting what the Commission could place on

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<sup>8</sup> Normally, we would not advise permitting a waiver that is limited to certain items in the file. This is a unique situation, however, and the documents at issue do not reveal anything that is not also revealed in the conciliation agreement.

<sup>9</sup> Based on information available at the time, there was reason to believe that the respondent made a prohibited contribution. The Audit Division's information included a check from Southwest Publishers for \$100 paid to the order of Ronnie Shows. In addition, the Audit Division's files contained a refund check in the amount of \$100 from the Committee.

<sup>10</sup> Commissioner Wold wrote a Statement of Reasons in this matter dated December 17, 2001.

the public record in *American Fed'n of Labor and Congress of Indus. Orgs. v. Federal Election Comm'n*, 177 F. Supp.2d 48 (D.D.C. 2001), *appeal docketed*, No. 02-5069 (D.C. Cir. Feb. 28, 2002), there is an issue as to whether the Commission can place Southwest Publishers' response on the public record. The respondent consented to the disclosure of the document at issue. 2 U.S.C. § 437g(a)(12). In order to disclose a complete record, this Office recommends that the Commission include Southwest Publishers' prior submissions on the public record only if it agrees to release the entire investigative file in this matter as it pertains to Southwest Publishers. See *American Fed'n of Labor and Congress of Indus. Orgs. v. Federal Election Comm'n*, 177 F. Supp.2d 48 (D.D.C. 2001), *appeal docketed*, No. 02-5069 (D.C. Cir. Feb. 28, 2002). This Office notified Southwest Publishers of our position on the matter.<sup>11</sup> In addition, this Office provided Southwest Publisher with a waiver form, which it has yet to return. Therefore, this Office recommends that the Commission determine not to place Southwest Publishers' submissions on the public record at this time.

V. RECOMMENDATIONS

1. Reopen this matter to rescind the signed conciliation agreement.
2. Approve a revised conciliation agreement reflecting the current Treasurer's status as a successor treasurer.
3. Grant the Treasurer's request to place his letters of March 19, 2002 and March 26, 2002 on the public record.
4. Grant the Candidate's request to place his letter of March 20, 2002 on the public record.
5. Determine not to place Southwest Publishers' submissions on the public record at this time.

<sup>11</sup> The file with respect to Southwest Publishers is sparse. Southwest Publishers' check to the Committee, the refund check from the Committee to Southwest Publishers, and the General Counsel's Report recommending that the Commission not reopen this matter will also be released if the entire file is released.

6. Approve the appropriate letters.

7. Close the file.

Lawrence H. Norton  
General Counsel

Date

8/8/02

BY:

  
Gregory R. Baker  
Acting Associate General Counsel

  
Lorenzo Holloway  
Assistant General Counsel

  
Susan L. Kay  
Attorney